

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONTE MCCLELLON,

Defendant.

CASE NO. 2:22-CR-00073-LK

ORDER CONTINUING PRETRIAL
MOTIONS DEADLINE AND
TRIAL DATE

This matter comes before the Court on its authority to continue trial under 18 U.S.C. § 3161(h). On October 30, 2023, Defendant Donte McClellon filed a Motion for a Status Conference, in which his newly appointed counsel indicated that the current trial date is unworkable and requested that the Court hold a status conference to determine a reasonable date for the trial. Dkt. No. 151 at 2–3. Trial is currently set for December 4, 2023, and pretrial motions were due October 30, 2023. Dkt. Nos. 141, 146.

Mr. McClellon’s former counsel withdrew on October 25, 2023. Dkt. No. 148. On October 27, 2023, the Court appointed Peter Camiel and Stephan Illa to represent Mr. McClellon. Dkt. Nos. 149, 150. When Mr. Illa met with Mr. McClellon on October 30, 2023, he informed Mr. McClellon

1 that “the trial date would likely need to be continued” because Mr. Illa was unavailable on the
2 current trial date and he and co-counsel “would need more than a month to review the discovery
3 and prepare pretrial motions.” Dkt. No. 151 at 2. Mr. Illa further explained that the October 30,
4 2023 pretrial motions deadline “would also need to be continued.” *Id.* Mr. McClellon stated that
5 he did not agree that a motion to continue the trial date was necessary and refused to sign a waiver
6 of his speedy trial rights. *Id.* at 3. Mr. Illa suggested filing “a motion for a status conference, where
7 the parties and the Court could determine a reasonable date for the trial,” and Mr. McClellon agreed
8 with that suggestion and directed his counsel to file the motion. *Id.*

9 The Court granted the motion for a status conference, setting it for November 7, 2023. Dkt.
10 Nos. 151, 152. During the status conference, the Court heard from Mr. McClellon, his counsel,
11 and the Government.

12 Mr. McClellon attempted to file numerous motions and a notice of appeal during the status
13 conference. The Court explained that those motions were not properly before it because Mr.
14 McClellon is represented by counsel and therefore cannot file motions pro se. *See Krongkiet v.*
15 *Beard*, 597 F. App'x 416, 417 (9th Cir. 2015) (“[T]he trial court need not entertain [a pro se] motion
16 while [a defendant] remained represented by counsel.” (citing *United States v. Bergman*, 813 F.2d
17 1027, 1030 (9th Cir. 1987)); LCrR 62.2 (A represented party “cannot appear or act on his . . . own
18 behalf in that case, or take any step therein, until after the party requests by motion to proceed on
19 his . . . own behalf, certifies in the motion that he . . . has provided copies of the motion to his . . .
20 current counsel and to the opposing party, and is granted an order of substitution by the court
21 terminating the party’s attorney as counsel and substituting the party in to proceed pro se; provided,
22 that the court may in its discretion hear a party in open court, notwithstanding the fact that he . . .
23 is represented by an attorney.”). Although Mr. McClellon’s requests relating to his counsel and
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1 potentially proceeding pro se, with hybrid representation, and/or with four attorneys were unclear,
2 the Court referred that oral motion to a Magistrate Judge.

3 Defense counsel then explained what preparation would be required to provide
4 constitutionally adequate representation to Mr. McClellon and identified the earliest dates by
5 which they could adequately be prepared for trial and the pretrial motions deadline.

6 Based on the statements made during the hearing, and after consideration of the record in
7 this case, the Court finds that there are numerous significant obstacles that will prevent Mr.
8 McClellon's newly appointed attorneys from being prepared for trial by December 4, 2023, and
9 that the ends of justice would best be served by continuing the trial date so they can provide
10 constitutionally adequate representation. *See* 18 U.S.C. § 3161(h)(7)(A). A failure to grant the
11 continuance would deny the defense a reasonable time necessary for effective preparation for trial
12 and other pretrial proceedings, especially in view of counsel's recent appointment, the volume of
13 discovery, the complexity of the case, and the need to consider and consult with experts, taking
14 into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv). The Court finds that
15 these ends outweigh the best interests of the public and Mr. McClellon in any speedier trial. *See*
16 *id.* § 3161(h)(7)(A). For these reasons, the failure to grant a continuance would also be likely to
17 result in a miscarriage of justice within the meaning of Section 3161(h)(7)(B)(i). Furthermore, due
18 to the time required to prepare for trial and prepare pretrial motions, this continuance would be
19 necessary whether Mr. McClellon continues with current counsel, proceeds with new or additional
20 counsel, or proceeds pro se or in a hybrid fashion.

21 For the foregoing reasons, and the reasons explained during the hearing, the trial date is
22 continued from December 4, 2023 to January 8, 2024. Pretrial motions must be filed no later than
23 December 4, 2023.

1 It is further ORDERED that, pursuant to 18 U.S.C. § 3161(h)(7)(A) and (B), the period of
2 delay from the date of this Order to the new trial date is EXCLUDED when computing the time
3 within which the trial must commence under the Speedy Trial Act.

4 Dated this 8th day of November, 2023.

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Lauren King
7 United States District Judge
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